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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,963	01/22/2004	Terri K. Taylor	022719-0052	6349
21125 7590 10/30/2008 NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604				
EXAMINER RAMIREZ, JOHN FERNANDO				
ART UNIT		PAPER NUMBER		
3737				
NOTIFICATION DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

doctet@nutter.com

# Office Action Summary

**Application No.**

10/762,963

**Applicant(s)**

TAYLOR ET AL.

**Examiner**

JOHN F. RAMIREZ

**Art Unit**

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed on 07/28/08 have been fully considered but they are not persuasive.

Applicant alleges that the Porat et al. reference fails to teach a transmitter configured to generate an energy field sufficient to effect movement of a valve mechanism. The examiner respectfully disagrees with applicant's assertions.

In figs. 10-11 and in col. 16, lines 11-28 and in col. 20, lines 14-35 of the Porat et al. patent specifications specifically states:

According to a preferred embodiment of the present invention signals received and/or transmitted by biosensor 100 are processed by a processor 113. Electrical signals generated by sensors 112 are processed through processor 113 and are forwarded in their processed or converted form to transducer 114. In addition, acoustic signals received by transducer 114 and which are converted to electrical signals (and power) thereby, are preferably further processed by processor 113.

To this end, processor 113, preferably includes a conditioner 116 and, when necessary, a digitizer 119 for processing the electrical signals received thereby from sensors 112 and/or transducer 114.

The acoustic interrogation signal is generated by an extracorporeal station 130 which includes an interrogator 115 and which is also illustrated in FIG. 10, the operation and construction of which is described in further detail below.

^ When it is desired to collect information from sensors  
212, station 130 (or at least transducers 321 thereof) is  
15 placed adjacent a portion of the patient's body in which  
biosensor 100 is implanted. As described before, station 130  
generates an interrogation signal delivered through trans-  
ducers 321 for concomitantly powering biosensor 100 and  
retrieving data therefrom via transducer 214 in a fashion  
20 similar to as described above with respect to transducer 114.  
Should the data collected indicate an abnormal intracranial  
pressure, valve 105 of shunt 202 is opened to drain cere-  
brospinal fluid therethrough. To this end station 130 can be  
commanded to provide power for the opening of valve 105.  
25 This operation can be controlled either manually or by a  
preprogrammed processor.  
According to another preferred embodiment of the present  
invention and as shown in FIGS. 11 and 14 there is provided  
a transducing assembly 351 which forms a part of station  
30 130. In one configuration, as best seen in FIG. 11, assembly  
351 is incorporated into a helmet 310. Helmet 310 includes  
a plurality of transducers 321, each may serve as a  
transmitter, receiver or transceiver, positioned at various  
locations so as to provide full transmittance/reception spatial  
35 coverage of the brain volume.

Based on the above observations, the Parot et al. patent teaches a  
transducer (114) that convert the acoustic signals into electrical signals and power that  
are further processed by a programmed processor to open the valve (105).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that  
form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public  
use or on sale in this country, more than one year prior to the date of application for patent in the United  
States.

**Claims 20-29 and 32, 37 are rejected under 35 U.S.C. 102(b) as being  
anticipated by Porat et al. (US 6,432,050).**

The Porat et al. reference disclose an acoustic monitoring device (100) for verifying the pressure setting of a valve mechanism in an implantable device (see abstract, col. 15, lines 18-67, col. 16 lines 1-23, see figs. 10 and 11), comprising: a transmitter (114, 118) configured to generate an energy field sufficient to effect movement of the valve mechanism of the implantable device (see col. 16, lines 6-23); and an acoustic sensor (100) electronically coupled to the transmitter (118) for detecting acoustic signals, wherein the transmitter (114, 118) creates electrical power for energizing the sensors (see col. 15, lines 18-67, col. 16 lines 1-23, see figs. 10 and 11, col. 20, lines 3-51), further including a housing having a top surface, a bottom surface, and a central opening (205) extending therethrough for containing the transmitter (214), including a tubular coupling member (205, 214) extending through the central opening, wherein the tubular coupling member is configured to contact a patient's skin (208, see col. 19, lines 15-40), wherein the acoustic sensor is selectively disposed within the tubular coupling member as shown in Figure 12, wherein the acoustic sensor is electromagnetically isolated from the transmitter (see figure 13 and col. 19, lines 55-65), further including mechanical isolating pads surrounding the inner surface of the tubular coupling member (see figure 12), wherein the sensor (212) is seated on top of the tubular coupling member (see sensors mounted on the upper surface of tubular area 205), and including a digitizing filter, and a data storage unit for transmitting any detected acoustic signals to a programmer for analysis (see Fig. 10, see col. 19, lines 65 – col. 20, line 26).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 30-31, 33-34, 36, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porat et al. (US 6,432,050) in view of Ericson et al. (US 5,533,733) in further view of Greeninger et al. (US 6,082,367).**

Porat et al. teaches all the limitations of the claimed subject matter except for mentioning specifically, a power source for driving the energy field, further comprising means for wireless communication between the acoustic monitoring device and the programmer, wherein the means for wireless communication comprises a wireless communication transmitter connected to the transmitter of the acoustic monitoring device, wherein the device includes a microprocessor that translates any detected acoustic signals into information for determining the success or failure of the adjustment cycle, wherein the microprocessor classifies the acoustic signals into signals indicative of movements and signals indicative of positions, wherein the microprocessor compares the actual streams of acoustic signals to an expected stream of acoustic signals to determine the success or failure of the adjustment cycle. However, in the same field of endeavor, Ericson et al. teach an implantable device for cerebrospinal fluid pressure monitoring that can be coupled to existing fluid shunting systems that uses a wireless transmission (see abstract), and receives power from an internal source (see

Fig. 5). Moreover, Greeninger et al., teach an implantable medical device that uses a microprocessor that is programmed for different operating parameters, operating modes and capabilities of monitoring varieties of physiologic conditions and electrical signals (see abstract). Therefore, it would have been obvious to one of ordinary skill at the time the invention was made to have modified the device disclosed by Porat et al., in light of the teachings of Ericson et al. and Greeninger et al., in order to provide a monitoring device with programmable capabilities that would avoid the possibility of unrecognized signals of life-threatening conditions in the monitored patient.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN F. RAMIREZ whose telephone number is (571)272-8685. The examiner can normally be reached on (Mon-Fri) 7:00 - 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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